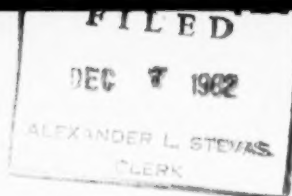


82-943



IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1982

DORIS B. ROSSON and DORIS B. ROSSON,
t/a DOCTOR'S ANSWERING SERVICE
and/or GREATER MANASSAS ANSWERING SERVICE,
APPELLANT,

v.

CITY OF MANASSAS and F.R. HODGSON,
ZONING ADMINISTRATOR, CITY OF MANASSAS,
APPELLEE.

ON APPEAL FROM THE SUPREME COURT OF
VIRGINIA
JURISDICTIONAL STATEMENT

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Questions Presented

I. Is a zoning ordinance violative of Section 1, of the 14th Amendment of the Constitution of the United States of America, if it prevents a widow, who lives alone, from conducting an occupation in her home with one or two employees, but permits the same use to be made of a home by a person who has an unlimited number of employees as long as they are all related and are occupants of the building?

II. Does a local government violate the provisions of Section 1, of the 14th Amendment of The Constitution of the United States when it:

a) Erroneously interprets and applies an otherwise constitutionally valid ordinance, in such a way that it permits a land use to

one citizen which it denies to another?

b) Restricts the conducting of home occupations in a residential district to persons who are occupants and related to each other, on the basis that it is the government's objective to preserve the family character of the neighborhood, while at the same time permitting uses such as "Adult Centers" and "group homes", hospitals and schools without restriction as to number of employees or relationship in the same residential district?

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Opinions Below

The Opinion of the Supreme Court of Virginia, rendered on September 9, 1982, by the Honorable Chief Justice, Harry L. Carrico, appears in A. 1-20.

The Mandate of the Supreme Court of Virginia dated September 9, 1982, reversing and annulling the judgment of the Circuit Court of Prince William County, Virginia, and remanding the case to the court for the entry of a restraining order, appears in A. 39-40.

The Memorandum On Decision of the Circuit Court of Prince William County rendered on January 2, 1982, by the Honorable Percy Thornton, Jr., appears in A. 21-34.

The Judgment Order entered by the Circuit Court of Prince William County, on February 1, 1980, appears in A. 35-37.

Grounds of Jurisdiction

This is an appeal from a decision of the Supreme Court of Virginia rendered on September 9, 1982, upholding the validity and constitutionality of a zoning ordinance of the City of Manassas, Virginia. Notice of Appeal was filed on October 9, 1982, in the Supreme Court of Virginia, with service of copies on all parties as required by law.

A copy of the Notice of Appeal appears in A. 41-43.

Jurisdiction for this appeal is conferred on this Court by 28 U.S.C.

§ 1257(2), which provides as follows:

"Final judgments or decrees rendered by the highest Court of a state in which a decision could be had, may be reviewed by the Supreme Court as follows:

(1) ...

(2) By appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity."

Constitutional and Statutory Provisions

Constitution of the United States

Amendment XIV, Section 1 (Appears in A. 48).

Ordinances of the City of Manassas:

Section 1-34 - Appears in A.44, 45.

Section 3-1-1 - Appears in A.45, 46.

Section 9-1-1 - Appears in A.46.

Section 9-1-3- Appears in A. 46.

Section 9-1-4- Appears in A. 46, 47.

Statement Of The Case

The appellant, Doris B. Rosson, a widow, and citizen of the United States of America, resides alone in a dwelling in the City of Manassas, Commonwealth of

Virginia. The dwelling is a rather large substantial colonial type home, rather picturesque, being one of the most attractive homes in the area. The dwelling fronts on an extremely busy four lane highway. The traffic count in 1978, was over 14,000 cars in a single twelve hour period. In this residentially zoned neighborhood, and in the immediate vicinity of the Rosson residence, are several dwellings in which home occupations are being conducted, such as doctor's offices. Immediately across the highway from Rosson is a structure, which was once a dwelling, but is now being used as a real estate brokerage office.

In a small, approximately 6' x 13' room of her dwelling, as described above, Rosson conducts and operates a telephone answering service with never more than one of two part-time employees, present at the same time. Rosson also maintains and rents out, four small apartments in the dwelling. The answering service and rentals from the apartments provide Rosson with substantially all of her income.

There is absolutely nothing about the external appearances of the dwelling which would lead one to conclude or even suspect that the property was anything

but a single family dwelling. Yet, Rosson was and is making three separate and distinct uses of her property, simultaneously, to-wit:

- 1) A residential use- permitted under the City's zoning ordinances in the zone in which Rosson's property was located, viz - R-1.
- 2) Rental of apartments - or an "apartment house" which is not permitted in the said R-1 zone, but is not a violation because of the City's ordinances relating to nonconforming uses. Sections 9-1-1, et seq., which appear in A.46-47. This use was being made of the property at the time that the zoning ordinance was adopted by the City of Manassas.
- 3) The challenged use of her property for the operation of a telephone answering service, which the City claimed and is claiming, violated Sections 3-1-1 and 1-34a, of the Zoning Ordinances of the City of Manassas.

On the 7th day of December, 1978, the City's prosecution of Rosson began and this case was born. Rosson was charged with the operation of a business in a residential district in violation of the zoning ordinances of the City of Manassas, Virginia. Upon being found guilty by the Prince William County

General District Court, of violating Section 3-1-1 and Section 1-34a, Zoning Ordinance of the City of Manassas, Rosson appealed to the Circuit Court of Prince William County, Virginia. Section 3-1-1 of the Ordinance, which appears in A. 45, 46, lists the uses which may be made of property in the residential or R-1, zone. Section 1-34a, which appears in A. 44-45, defines a "home occupation" as an occupation conducted in a residential dwelling unit and restricted to persons who are related and residing in the dwelling. During the pendency of the appeal, City filed a chancery suit in the said Circuit Court, seeking to enjoin Rosson from continuing with the operation of the answering service in her home. The criminal matter and chancery cause were heard together by the said Circuit Court.

City's position, in the trial court, as well as in the Supreme Court of Virginia, was and is essentially that the discrimination inherrent in Section 1-34(a) of it's zoning ordinance is justified as an exercise of its police power, to preserve the existing residential character of residential

areas by restricting the size of home occupations. The contention of Rosson was and is that this is precisely what the ordinance does not do. Rosson argued in the trial court as well as in the Supreme Court, that by restricting the home occupation to occupants who were related, without any restriction as to number of employees, the ordinance did not limit the quantitative use of the property at all, it only attempted to limit the qualitative use which will be made of the property, and thus its discriminatory effects could not be justified.

Rosson also pointed out, in the trial court as well as in the Supreme Court of Virginia, that the same Ordinance permits the following uses in the Residential District, R-1: Group Homes, Homes for adults, schools, hospitals and churches, without any limitation as to number of employees or relationship of any kind. Rosson also proved in the trial court, and addressed in the Supreme Court of Virginia, the erroneous and discriminatory application of another section of the same zoning ordinance. Section 9-1-1 of the City's

Zoning Ordinance, provides:

"If at the time of the enactment of this ordinance any legal activity which is being pursued, or any lot or structure legally utilized in a manner or for a purpose which does not conform to the provisions of this ordinance, such manner of use or purpose may be continued as herein provided."

At the time that the City's Zoning ordinance was adopted the following two uses (among others) were being made of property in Rosson's Neighborhood:

a) The use of the Rosson property as an apartment house.

b) The use by a Dr. William Jamison, of a dwelling immediately across the highway from the Rosson property, as a professional medical office, which employed his wife and one part-time employee.

So, then, at the time that the City of Manassas adopted the zoning ordinance, the use of the Rosson property as and for an apartment house, and the use of Dr. Jamison's property as a professional medical office - home occupation - were "grandfathered" in under the ordinance.

Another section of the zoning ordinance, Section 9-1-3, provides:

"If any non-conforming use (structure or activity) is discontinued for a period exceeding one year (1) year after the enactment of this ordinance, it shall then conform to the requirements of this ordinance."

Dr. Jamison, who was a medical doctor, licensed by the Commonwealth of Virginia to practice medicine, died subsequent to the adoption of the said zoning code by the City of Manassas. The dwelling was never used for the practice of medicine again after his death. Over one year and-a-half after his death, his widow, Mrs. Jamison, sold the property to an entity known as Wright Realty. Wright Realty received permission from the City of Manassas to conduct and operate a real estate brokerage business from said dwelling without any requirement as to residency or occupancy. The business has between 11 - 13 sales agents going in and out of the premises, plus what ever number of customers they are able to generate by their activity.

The City argued that the terms of the ordinance were met because the use by Mrs. Jamison, as a registered nurse, in dispensing medication to the late Doctor's patients and collecting the

receivables, was actually a continuation of the former use as a licensed medical doctor's practice of medicine. Rosson of course argued against such a strained rationalization.

During the said one and one-half years that Mrs. Jamison dispensed medication, after the death of Dr. Jamison, she had no employees. This is also significant because another section of the City's zoning ordinance provides:

"9-1-4. Whenever a non-conforming structure, lot or activity has been changed to a more limited non-conforming use, such use may only be changed to an even more limited use."

Rosson argued that, assuming that the use by Mrs. Jamison was a continuation of the former use, the Wright Realty use was a violation of this provision also since the use by Wright Realty was certainly a much larger or more extensive use than the use which Mrs. Jamison was making of the property after the death of her husband.

The trial court, paragraph 9, of Memorandum On Decision, (A.31), found that the foregoing handling of the Wright Realty use of the Jamison property was additional discrimination. The Supreme Court of Virginia disposed of the question

thus raised by observing, on page 10, of its Opinion as delivered by the Honorable Chief Justice Harry I. Carrico, that "...Even if we assume Wright Realty's use is wrongful we must reject this suggestion; the law does not follow the thesis that two wrongs make a right." (A. 19).

The trial court agreed with Rosson and held that the provisions of Section 1-34a of the subject zoning ordinance are "...discriminatory, arbitrary and unreasonable when applied to "non-family" or "single" residential property owners who desire to conduct a (limited) home occupation with "outside assistance." The trial court also held that the provisions of said ordinance "...are not substantially or reasonably related to the promotion or protection of the health, safety, and general welfare of the public," and "...that enforcement of said provisions would deprive the Respondent of a legitimate use of her property, and would therefore, be in violation of Article 1, of Section 11, Constitution of Virginia, and Section 1, 14th Amendment, Constitution of the United States of America. A. 47-48.

The trial court thereupon denied the injunctive relief sought by the City and dismissed the criminal action against Rosson.

The Supreme Court of Virginia, in reaching the question as to reasonableness of the "no outsider" restriction of the subject ordinance, found that there was enough evidence to make the question of the restriction's reasonableness "... at least fairly debatable. Hence, the presumption of reasonableness was not defeated." (A. 15). With this question out of the way the Court then went on to the question whether the "no outsider" restriction is rationally related to a permissible state objective." (A. 15). Pointing out that Sections 15.1-427 and 15.1-489 of the Code of Virginia, established the legislative goal of providing residential areas with healthy surroundings for family life and facilitating the creation of a convenient, attractive and harmonious community, it goes on to find that the "no outsider" restriction of the City of Manassas ordinance contributes directly and substantially to that objective. (A. 16). Hence, the Supreme Court of Virginia reversed the judgment of the

Circuit Court of Prince William County and remanded the case for the entry of an appropriate restraining order in accordance with the prayer of the City's petition. (A. 19-20).

On motion being made by Rosson, the Supreme Court of Virginia has granted a stay of its judgment pending this appeal.

The Questions Presented Are Substantial

This Court has said that Zoning is a complex and important function of the State. Mr. Justice Marshall, in his dissent to the majority decision in Village of Belle Terre et al., v. Bruce Boraas et al., 416 U.S. 1, 39 L. Ed 2d 797, 94 S. Ct. 1536, went a bit further and said "...It may indeed be the most essential function performed by local government, for it is one of the primary means by which we protect that sometimes difficult to define concept of quality of life." Our rights to life, liberty and the pursuit of happiness would not have much significance if they were not grounded on the right to own and use our property with due regard, of course, to the rights of others.

While it is true that superficially it may appear that Question No. 1, may

have already been dealt with by this Court in the Boraas case, the facts are quite different. In the Boraas case the Village was attempting to preserve existing conditions in a quiet village of only 220 homes. It was a community which restricted land use to one-family dwellings and excluded lodging houses, boarding houses, fraternity houses, or multiple-dwelling houses. In the instant case, however, Manassas is a city with heavy traffic, and not a quiet little village; some of the permitted uses in the residential neighborhood are hospitals, schools, group houses, adult centers and home occupations. More importantly, the restriction in the Boraas case to relationship had a substantial connection to the attainment of the end being sought--the exclusion of boarding houses, lodges and apartments from the Village, and thus preserving, insofar as practicable, the "family like" atmosphere and environment of the Village.

In the instant case, however, the family atmosphere had left the area, there was nothing left there to "preserve." The stated objective of the City was to limit the size of home occupations in a neighborhood in which home occupations

were being conducted. To limit the conduct of such occupations to occupants of the dwelling who were related by blood or marriage without any limitation as to the number who could be employed has no reasonable connection to accomplishing the stated objective.

Additional support for the substantiality of the questions presented, and why the Boraas case is not and should not be held as controlling, is found in the case of Village of Euclid v. Ambler Realty Company 272 U.S. 365, 71 L. Ed 303, 47 S.Ct. 114. Mr. Justice Sutherland, in speaking for the Court, said:

"... In the realm of constitutional law, especially, this court has perceived the embarrassment which is likely to result from an attempt to formulate rules or decide questions beyond the necessities of the immediate issue. It has preferred to follow the method of gradual approach to the general by a systematically guarded application and extension of constitutional principles to particular cases as they arise, rather than by out of hand attempts to establish general rules to which future cases must be fitted. This process applies with peculiar force to the solution of questions arising under the due process clause of the constitution as applied to the exercise of the flexible powers of police, with which we are here concerned."

Governments must be constrained in

their encroachment on the basic rights we hold as sacred. The subject ordinance, if permitted to stand, not only is but another encroachment on such rights, it also works a serious and grievous injustice on Rosson as well as on every citizen of this land who is similarly situated. A consideration of some of the possible results of the enforcement of such an ordinance might serve as yet another reason why this case should be heard by this Court. For instance, what does the person do, who has built up a business in his or her home with the aid of two children, as employees, who are in turn supported by the parent from the income derived from the business, when the children leave? Is he or she then added to the ever increasing welfare rolls?

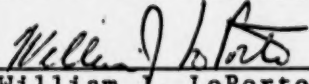
Finally, the question is substantial because a citizen has been discriminated against to her great prejudice and injury. Not only because of the enforcement of Section 1-34a of the City's zoning ordinance, she has also been injured because of the City's interpretation and application of Sections 9-1-1, 9-1-3 and 9-1-4, of said ordinance. Unless the Court corrects this injustice now, the

course of local governments will continue in the direction of even more encroachment on our precious bundle of rights which seems to be growing lighter as our burdens grow heavier.

Rosson, on her own behalf, as well as on the behalf of all other citizens similarly situated, or who may be so in the future, respectfully asks that she be given the opportunity to be heard. She has no other recourse for possible redress.

Respectfully Submitted

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